

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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97251

FILE: B-183388

DATE: May 29, 1975

MATTER OF: MKS Instruments, Inc.

DIGEST:

Since protester did not protest allegedly arbitrary IFB specifications, which were contended to have been based on successful bidder's standard equipment, prior to bid opening, its protest is untimely and not for consideration.

By teletype of March 6, 1975 (received at the General Accounting Office (GAO) on March 11, 1975), MKS Instruments, Inc. (MKS), protested the award of a contract to Datametrics pursuant to invitation for bids (IFB) No. F40650-75-B-0023 issued by the Department of the Air Force, Arnold Engineering Development Center, Arnold Air Force Base, Tennessee, for a capacitance manometer pressure/vacuum measuring system. By letter dated March 13, 1975, MKS indicated that the sole basis for its protest was that the IFB specifications were arbitrary and based upon Datametrics' standard equipment.

The IFB was issued on November 5, 1974, with bid opening on December 4, 1974. On January 20, 1975, award was made to Datametrics on which date MKS was telephonically advised of the rejection of its bid. On January 21, 1975, MKS was formally notified that its bid had been found to be nonresponsive to several of the IFB specifications. MKS protested the rejection of its bid to the Air Force on January 30, 1975. After the Air Force denied MKS's protest by letter dated February 24, 1975, MKS protested to our Office.

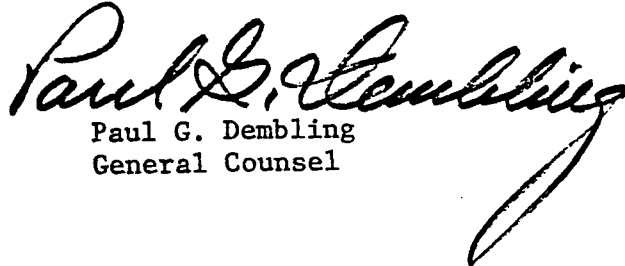
Section 20.2(a) of our Bid Protest Procedures and Standards (4 C.F.R. § 20.2(a) (1974)) states in pertinent part:

"(a) * * * Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. * * *

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Since MKS did not protest the allegedly arbitrary IFB specifications prior to bid opening, its protest is untimely.

Therefore, the merits of the protest will not be considered.


Paul G. Dembling
General Counsel